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Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLIV. Massage Therapists

Chapter 1. General Provisions

§101. General Provisions

A. Under the authority of R.S. 37:3551 et seq., the Louisiana State Board of Massage Therapy is adopting the following rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapists, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 3. Definitions

§301. Definitions

A. The following words and terms, when used in these rules and regulations, shall have the following meaning unless the text thereof or the definitions contained in the above cited statutes clearly indicate otherwise.

Board☐The Louisiana Board of Massage Therapy.

Department☐The Department of Health and Hospitals.

Drape☐Towels, gowns, or sheets used to cover clients while massage therapy is being delivered.

Massage Establishment☐Any place of business in which massage therapy is practiced by a massage therapist.

Massage Therapist☐An individual who practices or administers massage therapy to a patron of either gender for compensation. The term shall include a therapeutic massage practitioner, massage technician, masseur, masseuse, or any derivation of those titles.

Massage Therapy☐The manipulation of soft tissue for the purpose of maintaining good health and establishing and maintaining good physical condition. The term shall include effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, active/passive range of motion, shiatsu and acupressure, either by hand, forearm, elbow, foot, or with mechanical appliances, for the purpose of body massage. Massage therapy may include the use of lubricants such as salts, powders, liquids, creams (with the exception of prescriptive or medicinal creams), heat lamps, whirlpool, hot and cold pack, salt glow, or steam cabinet baths. It shall not include electrotherapy, laser therapy, microwave therapy, colonic therapy, injection therapy, or manipulation of the joints. Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, shiatsu, body work, or any derivation of those terms. As used in these rules, the terms *therapy* and *therapeutic* shall not include diagnosis, treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law.

Massage Therapy Instructor☐An individual who is licensed as a massage therapist, who possesses credentials satisfactory to the board and who meets criteria established by the board pursuant to this rule.

Person☐An individual, corporation, association, or other legal entity.

Probable Cause☐An apparent state of facts found to exist which would cause a reasonably prudent person to believe that the applicant has committed an act constituting grounds for disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 5. Applicability and Exceptions

§501. Applicability

A. This Part shall apply to any person practicing as a massage therapist within the state of Louisiana.

B. This Part shall not apply to any services performed in hospitals licensed by the state or to any person who is licensed in Louisiana as a physician, chiropractor, physical therapist, nurse, cosmetologist, athletic trainer, or as a member of another health care profession that is subject to licensure by the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 7. Board Composition and Officers

§701. Board Composition and Officers

A. The board shall be comprised of seven members, five licensed massage therapists and two lay members who shall serve no more than two consecutive terms of two years each. The board shall elect a chairperson, vice-chairperson, treasurer and secretary. Officers of the board will be elected annually to perform duties as listed in the board by-laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 7:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 9. Code of Ethics

§901. Code of Ethics

A. Every person licensed as a massage therapist shall subscribe to and practice by the Code of Ethics established by the board. The board shall make copies of the Code of Ethics available to licensees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 11. Licensure Qualifications

§1101. Licensure

A. Licensure Requirements

1. No person shall act as or perform the duties of a massage therapist unless he possesses a current license issued pursuant to these rules or is exempt under the provisions of these rules.

2. A licensed massage therapist shall not perform massage therapy, whether or not for compensation, at or for a sexually oriented business, as defined in R.S. 37:3558(D).

3. A licensed massage therapist shall not be directly employed by a person licensed to practice medicine or osteopathy pursuant to R.S. 37:1261 et seq.

B. A person desiring to be licensed as a massage therapist shall apply to the board to take the examination provided for in R.S. 37:3551 et seq. To be eligible to take the examination, an applicant shall pay the examination fee and shall submit evidence satisfactory to the board that he has met one of the following requirements:

1. satisfactory completion of massage therapy studies in a 500 hour minimum supervised course of instruction. The course of instruction may be provided by a proprietary massage therapy school licensed by the state department of education. The minimum 500 hours shall consist of:

a. 325 hours dedicated to the study of basic massage therapy techniques and clinical practicum-related modalities;

b. 125 hours dedicated to the study of anatomy and physiology; and

c. an additional 50 hours of discretionary related course work, including but not limited to:

- i. hydrotherapy;
- ii. business practices and professional ethics;
- iii. health and hygiene;
- iv. cardiopulmonary resuscitation (CPR) and first aid;

2. has been in the practice of massage therapy for a minimum of three consecutive years prior to January 1, 1995;

3. holds a valid license as a physical therapist pursuant to R.S. 37:2401 et seq.; or

4. has been licensed or registered as a massage therapist in another state, territory, commonwealth, or the District of Columbia which has and maintains standards and requirements of practice and licensure or registration which substantially conform to the requirements in force in this state, as determined by the board, subsequent to January 1, 1995.

C. After review of the evidence submitted, the board shall notify each applicant that his application and accompanying documentary evidence is either satisfactory and accepted, or is unsatisfactory and rejected. If an application is rejected, such notice shall state the reasons for the rejection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 13. Examination

§1301. Requirements

A. Examination Requirements

1. Persons seeking a license must first pass a two-part examination, consisting of a written examination and a practical or an oral examination. Successful passage of the National Massage Therapy Examination will substitute for the written portion of the Louisiana examination.

2. The written examination may include the following subjects: theory of massage therapy, anatomy, physiology, hydrotherapy, statutes and rules concerning massage, and business ethics. There shall be a maximum score of 100 on the written examination. Each question shall be given equal weight.

3. The practical examination may require:

a. the massage therapist to demonstrate proficiency as determined by the examiners in the following:

i. Western techniques (effleurage; petrissage; friction; vibration; tapotement; joint movement; continuity of motion); and

ii. Eastern techniques (may include but not limited to 12 Regular Meridians or 8 Extraordinary Meridians; point locations; visceral location); or

b. an oral examination may include: clinical situations; statutes and rules; any of the techniques listed in the practical examination (Paragraph 3 above).

4. Techniques will only be asked from the exam that apply. The oral or practical exam shall count a maximum of 100 points.

5. The score necessary to achieve a passing grade for licensure shall be 65 percent or better of 100 percent on both the written, and practical or oral parts of the examination. This will be in effect until January 1, 1995. Thereafter the

score necessary to achieve passing grade for licensure shall be 70 (percent) or better out of 100 percent on both the written and practical or oral parts of the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 15. Application Deadlines

§1501. Application Deadlines

A. Applications for Examination. An applicant for examination or re-examination for licensure must submit a complete application at least 75 days prior to the examination date. The examination or re-examination fee must accompany the application. The application must include proof that the applicant has completed an approved course of study or has been in massage practice for three years or more by January 1, 1995.

B. Re-Examinations. An applicant who fails either Part 1 or Part 2 of the state examination for licensure shall be required to pay the full amount to retake only the part of the examination failed to achieve a passing grade.

C. Review Procedures. An applicant is entitled to review his examination questions, answers, papers, grades and the grading key used in the state examination for licensure under such terms and conditions as may be prescribed by the board. Fees for such review of the licensure examination shall be: review of practical and written examination, \$75; review of practical examination only, \$50; review of oral examination only, \$50; review of written examination only, \$50.

D. Board Examination Review Request. If, following review of his examination, an applicant believes that an error was made in the grading of his examination or in the evaluation of his answers, he may request that the board review his examination. Requests for review must be in writing, stating with specificity the reasons why review is requested. The request must be received by the board within 30 days after the applicant has received notice that he failed all or part of the examination.

E. Board Examination Review. Upon the receipt of a request for review, the board shall, within 30 days, review the applicant's examination. If the board finds that an error was made, the board will correct the grade received by the applicant to reflect that finding. The applicant shall be notified of the board's action. If an error is found, the board will waive half the fees for review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1995).

Chapter 17. Endorsements

§1701. Licensure by Endorsement

A. Subsequent to January 1, 1995, the board may issue a license by endorsement to persons who:

1. pay the board a fee equal to the licensing fee set forth in this rule; and
2. are currently licensed to practice massage therapy under the laws of another state, the United States, or a foreign sovereign state, whose standards for licensure for education are substantially similar to, equivalent to, or more stringent than those required by Louisiana law and this rule;
3. demonstrate that the out-of-state license was issued upon the satisfactory completion of an examination comparable to the examination given by the board; and
4. have no outstanding or unresolved complaints in the state of licensure.

B. The board may interview an applicant for licensure by endorsement to determine whether he qualifies for such endorsement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 19. Provisional License

§1901. Requirements and Supervision

A. Board approval of an applicant for examination shall constitute approval for a provisional license providing the applicant: submits the provisional license fee of \$25; submits a form signed by a licensed massage therapist who agrees to supervise the provisional licensee according to R.S. 37:3551 et seq; is not under investigation for any conduct which could result in the denial of licensure; and meets all other qualifications of R.S. 37:3551 et seq.

B. Advertising of massage services rendered by a provisional licensee is prohibited unless such advertisement clearly indicates that the licensee holds a provisional license and is practicing under the supervision of a licensed massage therapist. The advertisement shall identify the sponsoring massage therapist by name, massage license number, and establishment license number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 21. Conditional Approval to Take Licensure Examination

§2101. Terms and Conditions

A. Based upon probable cause, the board may require that the applicant agree to such terms and conditions as the board deems necessary to protect the public health and safety.

B. The terms and conditions the board may impose under this rule are:

1. before receiving a license, the applicant must appear before the board to respond to questions regarding the application;

2. when convicted of a crime, the applicant must submit copies of all available court documents (including a certified copy of the judgment, indictment or information and related documents, including police and probation reports). For purposes of these rules, a plea of "nolo contendere" to a crime constitutes a conviction of that crime;

3. the applicant must authorize the board to receive and review all records of the applicant's medical, psychiatric, or psychological treatments;

4. the applicant must submit to mental or physical examination by a board approved physician or psychologist;

5. in the event the board grants the applicant a license, the applicant must agree to limit the scope of his practice in such manner as the board may determine necessary to protect the public health and safety;

6. the applicant must agree to receive alcohol, drug abuse, or psychological counseling;

7. the license to practice massage therapy may be issued subject to probation of up to one year in duration;

8. the applicant's practice of massage therapy must be under the supervision of a board approved licensed massage therapist who may be required to make periodic reports to the board regarding the applicant's competence to practice massage therapy; and

9. such other terms and conditions reasonably designed to protect the public health and safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 23. Licensure of Massage Establishments

§2301. Establishment Licensure Requirements

A. Each establishment, as defined in Chapter 3 of these rules, shall obtain a license from the board.

B. The applicant for licensure shall be the owner, lessee or legal possessor of the establishment.

C. The applicant shall apply for licensure on a form furnished by the board and shall pay the appropriate fee as set forth in this rule.

D. The applicant shall submit proof of current property damage and bodily injury liability insurance coverage for the proposed establishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 25. Massage Establishment Safety and Sanitary Requirements

§2501. Safety and Sanitary Requirements

A. Sanitary Requirements. Each massage establishment shall be maintained and operated in a safe and sanitary manner. To that end, each massage establishment shall:

1. comply with all state and local building fire and safety code requirements;

2. provide for safe and unobstructed human passage in the public areas of the premises, removal of garbage and refuse and safe storage or removal of flammable materials;

3. maintain on the premises a fire extinguisher in good working condition;

4. exterminate all vermin, insects, termites, and rodents on the premises;

5. maintain all equipment used to perform massage services on the premises in a safe and sanitary condition;

6. launder, before reuse, all materials furnished for the personal use of the customer, such as towels and linens;

7. provide adequate toilet and lavatory facilities. To be adequate, such facilities shall have at least one toilet and one sink with running water. Such facilities shall be equipped with toilet tissue, soap dispenser with soap or other hand cleaning materials, sanitary towels or other hand-drying device such as a wall-mounted electric hand-dryer, and waste receptacle. Such facilities and all of the foregoing fixtures and components shall be kept clean, in good repair, well-lighted, and adequately ventilated to remove objectionable odors;

8. adequately maintain shower facilities on the premises if equipped with a whirlpool bath, sauna, steam cabinet and/or steam room;

9. maintain current liability insurance coverage. The original or a copy of such policy shall be available on the premises of the establishment;

10. maintain toilet facilities in a common area of the establishment. Establishments located in buildings housing multiple businesses under one roof such as arcades, shopping malls, terminals, hotels, etc., may substitute centralized toilet facilities. Such central facilities shall be within 300 feet of the massage establishment;

11. maintain lavatories for hand cleansing and/or chemical germicides designed to disinfect and cleanse hands without the use of a lavatory in the treatment room itself or within 20 feet of the treatment area.

B. Draping. Each massage establishment shall maintain a sufficient supply of clean drapes for the purpose of draping each client during massage. Before beginning a massage, each massage therapist shall have explained expected

draping techniques and provided the client a clean drape for that purpose. In the case of a male client, buttocks and genitalia must be covered; and, in the case of a female client, breasts, buttocks, and genitalia must be covered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 27. Inspection upon Application for License of Establishments

§2701. Inspections

A. Initial Inspection. Upon receipt of an application for a massage establishment license, the board may cause an investigation to be made of the site to confirm that the site is to be utilized for massage.

B. Periodic Inspections. The board may make periodic inspections of all massage establishments licensed in this state. Such inspections shall include, but not be limited to, whether the establishment is in compliance with the rules governing the establishment's operation, facilities, personnel, safety, sanitary requirements, and, review of existing insurance coverage. Failure to cooperate with such inspection may lead to disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 29. Notification to Board of Change of Status

§2901. Name, Ownership and/or Location Changes

A. All changes of name, ownership and/or location must be reported to the board within 30 days of occurrence. A massage establishment shall not operate or advertise using a name other than the name under which the establishment license was issued. When a massage establishment's name is changed, without a change in ownership or location, a new establishment inspection is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 31. Prohibitions on Sexual Activity within Massage Establishments

§3101. Prohibition of Sexual Activity

A. All sexual activity by any person or persons in any massage establishment is absolutely prohibited.

B. No massage establishment owner shall engage in or permit any person or persons to engage in sexual activity in that owner's massage establishment or to use that establishment to make arrangements to engage in sexual activity in any other place.

C. No licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client.

D. As used in this rule, "sexual activity" means any direct or indirect physical contact or connection by any person, or between persons, which is intended to erotically stimulate either or both persons or which is likely to cause such stimulation (this includes sexual intercourse, fellatio, cunnilingus, masturbation or anal intercourse). For purposes of this Section, "masturbation" means the manipulation of any body tissue with the intent to cause sexual arousal. As used herein, sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm, or ejaculation occurs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 33. Applications, Issuance of Licenses and Certificates of Registration, Referrals

§3301. Procedures

A. Applications for licensure, registration, or renewal shall be on forms provided by the board and shall be accompanied by the appropriate fees.

B. The board shall issue a license to each person qualified as a massage therapist and a registration certificate to each qualified massage establishment. To be qualified for licensure as a massage therapist, an applicant shall have successfully passed the examination provided for in this rule. Such license or certificate grants all professional rights, honors, and privileges relating to the practice of massage therapy.

C. Each licensed massage therapist shall publicly display his license. In addition, each massage establishment shall post, in plain sight, its certificate of registration and the license of each massage therapist who practices in the massage establishment.

D. A license or registration certificate is the property of the board and shall be surrendered upon demand of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 35. Provisional License, Limited Renewal

§3501. Limitations

A. An applicant who possesses the qualifications specified in these rules to take the board examination may be granted a provisional license to engage in the practice of massage therapy until the date of the next examination and thereafter until the results of the examination are known.

B. An individual who has been issued a provisional license shall only practice massage therapy under the supervision of a licensed massage therapist.

C. Such provisional license may, at the discretion of the board, be renewed once.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 37. Continuing Education

§3701. Continuing Education Requirements

A. Each licensed massage therapist shall be required to complete a minimum of 12 contact hours per year. A video cassette course will be accepted provided the course requires passing a test graded by the provider of the course. Video cassette courses shall be a minimum of three hours per subject, and must meet the requirements of the board regarding continuing education providers.

B. Each year, an application for renewal will be mailed to each licensee at the last address provided to the board. Applicants shall include information on continuing education requirements when submitting the completed renewal form to the board. The renewal application shall include a statement in which the licensee shall declare that he has completed the required 12 hours of approved continuing education, including a listing of courses taken. The licensee shall retain such receipts, vouchers or certificates as may be necessary to document completion of the continuing education listed on his renewal form for a period of not less than four years. The board will audit, at random, a number of licensees to assure that the continuing education requirements are met.

C. Failure of the licensee to satisfy the requirements of this rule shall be a violation and shall subject licensee to disciplinary actions pursuant to these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 39. Requirements for Board Approval of Continuing Education Providers and Programs

§3901. Continuing Education Provider Requirements

A. For the purpose of renewing or reactivating a license, credit for continuing education hours will only be awarded for providers and/or programs approved by the board. Each provider must make application for board approval on forms provided by the board, submit a fee of \$100 for an initial request for provider approval and \$100 for a biannual request for provider renewal, and a fee of \$50 per program application.

B. The continuing education provider must provide in writing, to the board, the name and address of the person responsible for insuring that each program meets the following requirements.

1. The provider must retain a "sign-in-sheet" with the signature of participants and copies of any promotional materials for at least four years following the course; and, provide each participant with a certificate or letter of attendance verifying the program has been completed. The certificate or letter shall not be issued until completion of the program and shall contain the provider's name and number, title of program and instructor, date, number of contact hours of credit and the licensee's name and license number.

2. Each program presented by an approved provider shall be relevant to and focus on massage theory, practice, methods, or Louisiana Revised Statutes and Administrative Code; have stated learning objectives; and, be taught by a person who meets at least one of the following criteria:

a. holds minimum of a bachelor's degree from a college or university which is accredited by a regional accrediting body recognized by the U.S. Department of Education, or a substantially equivalent accrediting body of a foreign sovereign state, with a major in a subject directly related to the content of the program to be offered; or

b. has graduated from a school of massage therapy or an apprenticeship program which has curriculum equivalent to requirements of the state, and approved by a state licensing authority, a nationally recognized massage therapy association or a substantially equivalent accrediting body, or the board; and, who has completed three years of professional experience in the practice of massage; and has, within the last five years of practical experience, had a minimum of two years teaching experience in the subject matter to be offered; has offered documents that he has taught the same courses on this approved subject a minimum of three times in the past two years before a professional convention, professional group, or at a massage therapy school, or, has completed specialized training in the subject matter and has a minimum of two years of practical experience in the subject.

C. The board retains the right and authority to audit and/or monitor programs given by any provider. The board may rescind approval if the provider has disseminated any false or misleading information in connection with the continuing education program or if the provider has failed to conform to and abide by the written agreement and rules of the board.

D. One hour of continuing education is defined as no less than 50 uninterrupted minutes of learning.

E. Presenters/moderators/instructors of courses shall not receive credit for courses they present.

F. A board-approved provider must submit a list of titles and brief description of any new courses to the board prior to offering such courses. The submitted information must also identify any new continuing education instructor and show that such instructor meets the criteria set forth in this rule.

G. The continuing education requirements shall not apply to a massage therapist within the year the therapist is first licensed in Louisiana. It shall apply to licensees in every year thereafter.

H. During the license renewal period, an application for renewal will be mailed to each approved continuing education provider at the last address supplied to the board. All board-approved providers shall renew their approved status on or before December 31 of each biennial year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 41. Health Data Record-keeping

§4101. Health Data

A. Data concerning an individual's health status must be systematically and continuously collected, recorded, and communicated in order to determine therapeutic needs, according to the following criteria.

1. The format for the collection of data must provide for systematic collection, frequent updating, accessibility, and appropriate confidentiality.

2. The appropriate data may include but is not limited to: growth and development factors; biophysical status; emotional status; ability to perform activities of daily living; patterns of coping; individual's perception of and satisfaction with his health status; individual's health goals; and, environmental factors (physical, social, emotional and ecological).

3. Data is collected by interview, examination, observation, and, reading of records and reports. Data is collected from individuals, family members, pertinent others and other health care personnel.

B. Massage therapy care goals are derived from an analysis of the health status data, according to the following criteria:

1. the individual's health status as compared to the norm to determine if there is a deviation and the degree and direction of deviation;

2. the individual's capabilities and limitations are identified;

3. the individual's complaints are identified and the therapeutic intervention and results of the intervention are described;

4. short and long term goals are mutually set with the individual and pertinent others. These goals are to be congruent with other planned therapies, stated in realistic terms and assigned a time period for achievement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 43. Fee Schedule

§4301. Fees

A. The fees charged in connection with licensing shall be as follows:

1. original massage license examination fee, \$75;
2. original massage therapy license fee, \$50;
3. original massage establishment license fee, \$75;
4. annual license renewal fee, \$50;
5. annual massage establishment license renewal fee, \$75;
6. CEU provider initial approvals, \$100;
7. biannual CEU provider renewals, \$100;
8. CEU program approval, per program, \$50;
9. returned check fee, \$25;
10. directory fee, \$40;
11. reissue of lost or destroyed certificate, \$15;
12. copy fee, per page, \$0.25;
13. plus postage and handling.

B. All fees are nonrefundable.

C. All fees shall be made payable to the Board of Massage Therapy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 45. Licenses Suspension, Revocation, or Failure to Renew

§4501. Suspensions and Revocations

A. The board may suspend, revoke, or refuse to issue or renew a license or registration certificate, after provision of appropriate notice and opportunity for hearing pursuant to the Administrative Procedure Act, upon proof of any of the following:

1. obtaining a license or registration certificate by means of fraud, misrepresentation, or concealment of material facts, including making false statements on an application or other document required by the board;
2. selling, bartering, or offering to sell or barter a license or registration certificate;
3. engaging in unprofessional conduct that has endangered or which is likely to endanger the health, welfare, or safety of the public, as further defined by rules of the board;
4. conviction of a felony or any crime arising out of or connected with the practice of massage therapy, unless such conviction was reversed on appeal;
5. violating or aiding and abetting in the violation of any provision of this rule and regulations;
6. failing to pass the examination for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 47. Advertising

§4701. Limitations

A. A person who does not hold a license as a massage therapist, physical therapist, chiropractor or athletic trainer or a certificate or registration as a massage establishment shall not use the words "massage," "shiatsu," or "body work" on any sign or other form of advertising. Any advertisement by a massage therapist or a massage establishment shall contain the license or registration number of such therapist or establishment.

B. Under no circumstance shall a sexually oriented business use the word "massage," "shiatsu" or "body work" on any sign or other form of advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 49. Penalties

§4901. Penalties

A. Any person, including the owner or operator of a massage establishment, who violates the provisions of R.S. 37:3551 et seq. shall be guilty of a misdemeanor, and, upon

conviction shall be fined not more than \$1,000 or imprisoned for not more than six months, or both.

B. Any person convicted of a violation of the provisions of R.S. 37:3551 et seq., shall additionally be ineligible for licensure as a massage therapist or registration as a massage establishment for a period of five years from the date of conviction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 51. Discipline and Injunctions

§5101. Discipline and Injunctions

A. In addition to the above actions and penalties, the board may cause to be issued an injunction without bond enjoining any person from violating or continuing to violate the provisions of R.S. 37:3501 et seq. in any court of competent jurisdiction.

B. In the suit for an injunction, the board may demand of the defendant a penalty of \$50 per day for each violation, reasonable attorney fees, and the court costs.

C. The judgment for penalty, attorney fees, and court costs may be rendered in the same judgment in which the injunction is made absolute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 53. Misconduct and Negligence in the Practice of Massage Therapy

§5301. Professional Misconduct

A. The following acts shall constitute misconduct in the practice of massage therapy for which disciplinary penalties may be imposed:

1. conviction or a finding of guilty in any jurisdiction, regardless of adjudication, of a crime which directly relates to the practice of massage or to the ability to practice massage. Any plea of "nolo contendere" shall be considered a conviction for purposes of this rule;
2. false, deceptive, or misleading advertising;
3. aiding, assisting, procuring, or advising any unlicensed person to practice massage contrary to this rule or to a rule of the department or the board;
4. engaging in or attempting or offering to engage a client in sexual activity, including any genital contact, within a client-massage therapist relationship;
5. making deceptive, untrue, or fraudulent representations in the practice of massage;

6. practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform;

7. delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them;

8. violating any provision of any rule of the board, or a lawful order of a board hearing, or, failing to comply with a lawfully issued subpoena;

9. operating any massage establishment unless it has been duly licensed as provided herein, except that nothing herein shall be construed to prevent the teaching of massage within the public school system or through any other governmental program in this state;

10. operating a massage establishment under a suspended or revoked license;

11. refusing to permit the board to inspect the business premises of the licensee during regular business hours;

12. practicing massage therapy when a license to practice massage has been revoked, suspended or otherwise acted against, including the denial of licensure by the licensing authority of another state, territory or country;

13. practicing massage at a site, location, or place which is not duly licensed as a massage establishment, except that a massage therapist may provide massage services, excluding colonic irrigation, at the residence of a client, at the office of the client, at a sports event, at a convention, or at a trade show;

14. failure to maintain continuing property damage and bodily injury liability insurance in the operation of a massage establishment.

B. The following acts shall constitute incorrect practice of massage for which disciplinary penalties may be imposed:

1. failure to perform any statutory or legal obligation placed upon a licensed massage therapist;

2. inability to practice massage with reasonable skill and safety to clients, by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of substance or as a result of any mental or physical condition;

3. failure to practice massage with that level of care, skill, and treatment which is recognized by a reasonably prudent similar massage therapist as being acceptable under similar conditions and circumstances;

4. failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition;

5. engaging in the practice of reflexology without a current massage license;

6. for purposes of this rule, "reflexology" is defined as the manipulation of the superficial tissues of the feet, based on the theory that manipulation of body reflex areas or zones can affect other body functions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 55. Disciplinary Actions

§5501. Guidelines for Disciplinary Actions

A. When the board finds that an applicant, provisional licensee, or licensee whom it regulates has committed any of the prohibited acts set forth in this rule, the board shall impose appropriate penalties within the ranges recommended in the following disciplinary guidelines.

B. Penalties imposed by the board pursuant to this Section may be imposed in combination or individually, and are as follows: refusal to license an applicant; revocation or suspension of license; issuance of a reprimand or censure; imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.

C. The provisions of this Section are not intended and shall not be construed to limit the ability of the board to informally dispose of disciplinary actions by stipulation, agreed settlement, or consent order.

D. The provisions of this Section are not intended and shall not be construed to limit the ability of the board to pursue collateral, civil or criminal actions when appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 57. Minor Violations

§5701. Minor Violations

A. The board hereby deems the following violations to be minor: failure to include the license number of either the massage therapist or the massage establishment in advertisements as required by this rule; practicing with an inactive license in violation of these rules when the license has become automatically inactive for failure to renew, so long as the license is reactivated within 30 days of automatic reversion to inactive status. Practice for more than 30 days after a license has automatically reverted to inactive status shall not be a minor violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 59. Investigation of Complaints

§5901. Investigation Procedures

A. The board is authorized to receive complaints against licensees or licensee applicants from any person.

B. Any complaint bearing on the professional competence, conviction of a crime, unauthorized practice, mental competence, neglect of practice or violation of the state law or ethical standards where applicable to the practice of massage therapy of any licensee, shall be submitted to the board.

C. Once a written complaint is received, the board will initiate a review of the allegations. The board may dispose of the complaint informally through correspondence or conference with the licensee and/or the complaint which may result in a consent order agreeable to both parties. If the licensee admits to the complaint and waives his right to a formal hearing, the board may impose appropriate sanctions without delay. If the board finds that a complaint cannot be resolved informally, the written complaint will be forwarded to the board's designated complaint investigation officer (hereinafter referred to as the CIO) for investigation.

D. The board's CIO shall have authority to investigate the nature of the complaint through conference and correspondence directed to those parties or witnesses involved. The CIO shall send the involved licensee notice of the investigation, containing a short summary of the complaint and any questions the CIO may direct to the licensee relative to the complaint. All letters to the licensee, the complainant, or any other witness, shall be sent by registered mail with the designation clearly marked on the outside of the envelope.

E. The CIO shall conclude the investigation as quickly as possible without compromising thoroughness. Unless the CIO demonstrates good cause satisfactory to the board to extend the time for the investigation, the investigation and recommended action shall be completed within 60 days of the date the CIO first receives the written complaint.

F. The CIO shall report to the board by mail and make a recommendation for procedure for an informal hearing, formal hearing or dismissal of the complaint. When the CIO's recommended action might lead to denial, suspension, or revocation of the license, the board shall convene a formal adjudication hearing. The CIO may determine that the licensee's explanation satisfactorily answers the complaint and may recommend to the board that the matter be dropped. The recommended remedial action or dismissal of the complaint shall be forwarded to the involved complainant and licensee.

G. The CIO may also resolve the complaint through a consent order entered into by the licensee and the complainant. If the order contains any agreement to a remedial course of action by the licensee, the agreement must be signed by the complainant, the licensee and the chairman of the board.

H. If the CIO's recommendation for informal hearing is accepted by the board, the CIO shall notify the licensee of the time and place of the informal hearing and of the issues to be discussed. The licensee shall appear on a voluntary basis. If the licensee notifies the CIO that he does not wish such an informal hearing, one shall not be held. In that event, the CIO shall recommend the initiation of a formal disciplinary hearing to the board.

I. The CIO shall recommend to the board the initiation of a formal disciplinary hearing if the investigation disclosed any of the following: a complaint is sufficiently serious to require formal adjudication; failure of the licensee to respond to the CIO's correspondence concerning the complaint; the licensee's response to the CIO's letter discloses that no further action is necessary; failure of an informal hearing to resolve all issues; or, refusal of the licensee to comply with the recommended remedial action.

J. The CIO shall submit any recommended action to the board in brief concise language, without any reference to the particulars of the investigation or any finding of fact or conclusions of law arrived at during the investigative process.

K. The board shall have authority to delegate to the CIO any alleged violations of the Louisiana Massage Therapists and Massage Establishments Act, prior to board action on such alleged violations. If requested by the board, the CIO shall submit the complete investigation file. Final authority for appropriate action rests solely on the board.

L. At no time shall the CIO investigate any case as authorized by the board or this Section wherein said officer has any personal or economic interest in the outcome of the investigation or is personally related to or maintains close friendships with the complainant or the licensee. In such event, the CIO shall immediately notify the board, who shall have authority to appoint an "ad hoc" CIO for disposition of that case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Chapter 61. Hearings

§6101. Compliance and Formal Disciplinary Hearings

A. The board shall be authorized to conduct two types of hearing: compliance hearings and formal disciplinary hearings.

1. Compliance Hearings

a. The board will provide a compliance hearing to an applicant who fails or is refused the opportunity to take the examination provided the rejected applicant requests a compliance hearing, in writing, within 30 days after the receipt of the notice of rejection. The applicant's request for a compliance hearing shall state reasons for the opposition to the rejected application or test results.

b. A licensee whose license is deemed lapsed shall be entitled to a compliance hearing, provided the licensee requests a compliance hearing in writing, within 10 days after receipt of the notice of the lapsed certificate, or, in the event that the licensee did not receive notice of the lapsed certificate, within 30 days of the date upon which the licensee would have lapsed by operation of law.

c. Whenever possible, the board shall schedule a compliance hearing on a rejected application in such a manner both that the applicant is given an opportunity to present evidence of compliance, and, the board is given time to rule on the hearing, that the applicant is able to take the next scheduled examination, if the board rules in the applicant's favor. If this is not possible and the board has reason to believe that the applicant's opposition has merit, the applicant shall be allowed to take the examination provisionally, pending the hearing and determination of the board.

d. The purpose and the intent of the compliance hearing is to provide a forum for the applicant or licensee to present documentary evidence in the form of affidavits, court records, official records, letters, etc., along with sworn testimony to establish that they do, in fact, meet the lawful requirements for the application or for the retention of the license. The board shall have the authority to administer oaths, hear testimony and conduct the hearing. The applicant or licensee may be represented by counsel, or may represent themselves.

e. In any compliance hearing, the burden shall be on the applicant or licensee to establish that he meets the criteria for licensure or that his certificate was renewed in a timely manner.

f. Within 15 days after the compliance hearing, the board will forward its final decision, including findings of fact and conclusions of law to the unsuccessful applicant by registered mail.

2. Formal Disciplinary Hearings

a. The board shall also be authorized to conduct formal disciplinary hearings. The board shall promptly notify the attorney general, who is authorized and directed to appear on behalf of the state.

b. The hearing shall be held before the board only after the involved licensee is given at least 30 days notice by registered mail. The content of the notice, as well as the conduct of the hearings, shall be governed by R.S. 49:955, being further provided that the licensee be advised of his right to be represented by legal counsel. The board shall arrange for a court reporter to make an accurate recording of all testimony presented at the hearing. By bringing a complaint, the client waives the privilege of confidentiality for purposes of the hearing.

c. The rules of evidence, notice, authority to administer oaths, issue subpoenas, conduct depositions and control confidential or privileged information, will apply to the formal adjudication hearing in accordance with the

Louisiana Administrative Procedure Act. Thereafter, the unsuccessful applicant or licensee may apply for a rehearing, as provided in R.S. 49:959, subject to further judicial review, pursuant to R.S. 49:964-49:965.

d. It is the licensee's continuing obligation to keep the board informed of his whereabouts. Accordingly, if notice of the hearing cannot be delivered by mail because of a change of address and the new address is not provided to the board, the board may hold the hearing in the licensee's absence, after making reasonable efforts to obtain the licensee's new address.

e. When the licensee receives notice, he may file an answer to the notice denying some or all of the charges, or offering any explanation or assert whatever defense is deemed applicable.

f. For good cause shown, the board has discretion to extend or continue the time set for the hearing for such reasons as ill health, inability to obtain counsel, the complexities of the case, or such other matters deemed by the board to present good cause.

g. The board shall elect from its membership a person to act as presiding officer at the hearing to make rulings on objections and the admissibility of evidence and to insure that the conduct of the hearing proceeds without delay and pursuant to law. Other board members may not delegate their decision-making and fact-finding duties to the presiding officer nor shall the presiding officer have any greater weight in the decision-making process. The board's findings of fact and conclusions of law shall be signed by the majority of the board finding those facts and conclusions of law. Any board member disagreeing with those findings of fact and conclusions of law may also file a dissent in the record.

h. Any board member having reason to believe that he is biased or prejudiced against any of the parties to the proceeding or who has a personal or economic interest in the outcome shall immediately notify the remaining board members and request to be relieved of participation in the proceedings. Any party to such a hearing may file with the board an affidavit requesting a disqualification because of bias or personal or financial interest. As soon as possible, but not later than the beginning of the hearing, the majority of the board must pass upon the request for disqualification. The concerned board member shall not vote in the action to disqualify. Any doubt concerning the fitness of a board member shall be resolved in favor of disqualification. In the event of disqualification, the board shall proceed without the disqualified member. The board members needed for a quorum and majority shall be reduced to compensate for the disqualified members.

i. The parties to the hearing are urged to confer prior to the hearing or through their respective counsel to attempt to reduce or simplify the issues to be heard. The board will, however, honor any stipulations arrived at between the parties as proven fact at the hearing. The purpose of the pre-hearing conference is to ensure that the hearing is not unusually delayed by receiving testimony or other evidence on matters which are not seriously in dispute.

j. The board shall have discretion to consolidate one or more cases for hearing involving the same or related parties, or substantially the same questions of law or fact. The board may also grant separate hearings if such a joint hearing would be prejudicial to one or more of the parties. If hearings are to be consolidated, notice must be given to all parties in advance of the hearing.

k. The presiding officer shall consider a motion to modify or quash any subpoena issued in connection with the hearing, provided that such motion is filed by registered mail with the board no later than three days prior to the hearing date, or the date scheduled for the deposition if the subpoena was issued in connection with a deposition. Possible grounds to quash or limit the subpoena include, but are not limited to: testimony or material protected by privilege of statute, regulation, or other law; burdensomeness that would not be justified in light of the evidence's importance to the case; undue hardship on a witness; vagueness; and, immateriality.

l. The procedures to be followed in conducting the hearing, governing the order of proceeding, rulings on evidence, and the board's decision, are contained in Chapters 11-14, respectively, of the Disciplinary Action Manual for Occupational Licensing Boards, prepared by the Louisiana Department of Justice, 1979, through the Office of the Attorney General. A copy of these pertinent chapters will be provided to an interested party involved with a hearing, by written request submitted to the board.

m. The burden of proof rests upon the attorney general who is bringing the charge before the board. No sanctions shall be imposed or order be issued, except upon consideration of the whole record, as supported by and in accordance with, reliable, probative and substantial evidence. While proof beyond all reasonable doubt is not required to establish a given fact as true, the burden must be carried by a clear preponderance of the evidence. This

standard of proof shall obtain in all hearings conducted before the board and any review or examination of evidence or any hearing requested.

n. Any party or person deemed to be governed by or under the jurisdiction of R.S. 36:3501-36:3516, may apply to the board for a declaratory order or ruling in order to determine the applicability of a statutory provision or rule of this board to said party or person. The board shall issue the declaratory order or ruling in connection with the request by majority vote of the board, signed and mailed to the requesting party. The board may seek legal counsel or an attorney general's opinion in connection with any such request.

o. Judicial review and appeal of any decision or order of the board shall be governed by R.S. 49:964-49:965.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994)

Chapter 63. Effect on Local Regulations

§6301. Effect on Local Regulations

A. Except as provided in R.S. 37:3567(B), the provisions of R.S. 37:3551 et seq. shall supersede any regulation adopted by a political subdivision of the state relating to the licensing or regulation of massage therapists or massage establishments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapy, LR 20:1002 (September 1994), repromulgated LR 20:1111 (October 1994).

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLIV. Massage Therapists
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